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5 Attorneys for Plaintiff

6 UNITED STATES DISTRICT COURT
7 DISTRICT OF NEVADA

8 UNITED STATES OF AMERICA,

9 Plaintiff,

10 v.

11 ARIEL VARONA MARTINEZ,

12 Defendant.
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2:99-cr-038-KJD-RJJ

GOVERNMENT'S MOTION TO
UNSEAL RECORDS OR, IN THE
ALTERNATIVE, TO FILE RESPONSE
TO DEFENDANT'S PETITION
UNDER SEAL

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16 CERTIFICATION: Undersigned counsel certifies that this motion is timely filed.

17 THE UNITED STATES, by and through DANIEL G. BOGDEN, United States Attorney,
18 and ELIZABETH A. OLSON, Assistant United States Attorney, files this motion for an order
19 unsealing the transcript of Defendant's change-of-plea hearing, the transcript of Defendant's
20 sentencing hearing, the plea agreement, and the judgment in this case or, in the alternative, to file
21 under seal its response in opposition to Defendant's petition for a writ of error *coram nobis*. This
22 order is sought for the following reasons:

23 1. The defendant, ARIEL VARONA MARTINEZ, has filed a petition for a writ of
24 error *coram nobis*. See CR 102. On August 1, 2011, this Court ordered the government to
25 respond to Defendant's petition by September 1, 2011. See CR 104.

26 2. The government's response refers to and quotes from the transcript of Defendant's
change-of-plea hearing, the transcript of Defendant's sentencing hearing, the plea agreement, and

1 the judgment. It appears from the clerk's record that each of these documents was filed under
2 seal. Although the government attached copies of these documents to its (unsealed) response to
3 Defendant's 2001 motion to vacate his sentence pursuant to 28 U.S.C. § 2255, *see* CR 93,
4 undersigned counsel has found no order unsealing those documents.

5 3. From her review of the available documents, undersigned counsel believes the
6 documents in this case were sealed because Defendant was at that time cooperating with law
7 enforcement. Undersigned counsel assumes that the parties asked to file these documents under
8 seal to avoid public disclosure of the fact of Defendant's cooperation. Other than general
9 references to Defendant's cooperation, undersigned counsel sees nothing in the transcript of
10 Defendant's change-of-plea hearing, the transcript of Defendant's sentencing hearing, the plea
11 agreement, or the judgment that would warrant sealing.

12 4. In his petition, which is unsealed, Defendant publicly acknowledges that he
13 provided substantial assistance to the government both before and after his sentencing. CR 101, at
14 2-3. In light of Defendant's public acknowledgment of cooperation, undersigned counsel does not
15 believe any purpose would be served by continuing to maintain under seal the transcript of
16 Defendant's change-of-plea hearing, the transcript of Defendant's sentencing hearing, the plea
17 agreement, or the judgment.

18 5. The government's response in opposition to Defendant's petition cites to and
19 quotes these documents. Therefore if the documents are to remain sealed, the government's
20 response should be filed under seal as well.
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1 **WHEREFORE**, based on the foregoing, the government respectfully requests an order
2 unsealing the transcript of Defendant's change-of-plea hearing, the transcript of Defendant's
3 sentencing hearing, the plea agreement, and the judgment in this case. In the alternative, the
4 government respectfully requests that its opposition to Defendant's petition for a writ of error
5 *coram nobis* be filed under seal.

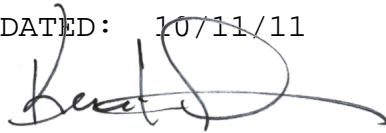
6 Dated this 1st day of September, 2011.

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8 DANIEL G. BOGDEN
United States Attorney

9
10 s/ Elizabeth A. Olson
ELIZABETH A. OLSON
Assistant United States Attorney

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12 IT IS ORDERED THAT THE TRANSCRIPTS ARE UNSEALED AS REQUESTED.

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14 DATED: 10/11/11

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UNITED STATES DISTRICT JUDGE